



**FEDERAL ELECTION COMMISSION**

WASHINGTON, D.C. 20463

February 3, 1989

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Jan W. Baran, Esquire  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

RE: MUR 2314  
National Republican Senatorial  
Committee  
Frederick W. Bassinger, as  
treasurer

Dear Mr. Baran:

On January 16, 1987, the Federal Election Commission notified your clients, the National Republican Senatorial Committee ("the NRSC") and its treasurer of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was enclosed with that notification. On August 4, 1987, the Commission notified you that it had found reason to believe that the NRSC and its treasurer violated 2 U.S.C. §§ 441a(h) and 434(b) and 11 C.F.R. § 110.6(d)(2) in connection with the apparent exercise of direction or control over contributions to Jim Santini for Senate ("the Santini Committee") for which the NRSC served as a conduit or intermediary.

Upon further review of the allegations contained in the complaint, and information supplied by you in response to the complaint, the reason to believe notification and accompanying interrogatories, the Commission, on January 24, 1989, found that there is reason to believe the NRSC and Mr. Bassinger, as treasurer, violated 11 C.F.R. § 106.1 and 2 U.S.C. § 434(b) in connection with the apparent failure to report contributions made to the Santini Committee in the form of solicitation costs. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the NRSC and Mr. Bassinger, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All

responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 15 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against the NRSC and Mr. Bassinger, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

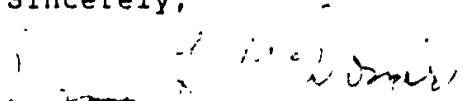
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

  
Danny L. McDonald  
Chairman

Enclosures  
Factual and Legal Analysis  
Order and Subpoena

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 2314

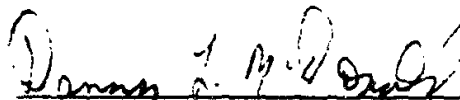
SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Frederick W. Bassinger, Treasurer  
National Republican Senatorial Committee  
440 First Street, N.W.  
Suite 600  
Washington, D.C. 20001


Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 15 days of receipt of this Order and Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 30th day of  
Jan, 1989.

  
\_\_\_\_\_  
Danny L. McDonald, Chairman  
Federal Election Commission

ATTEST:

  
\_\_\_\_\_  
Marjorie W. Emmons  
Secretary to the Commission

Attachments

Instructions

Definitions

Questions and Document Request (6 pages)

50300-563-10-66

### INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1985 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

### DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms below are defined as follows:

"Document" shall mean the copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known or believed by you to exist. The term document includes, but is not limited to, books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

The "NRSC" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents, or attorneys thereof.

The "Santini campaign" or the "Santini Committee" shall mean the committees or other entities for the receipt of contributions for James D. Santini for election to the U.S. Senate in 1986, including, but not limited to, Jim Santini for Senate (his principal campaign committee) and Friends of Jim Santini (the exploratory committee that became Jim Santini for Senate in 1986), including all officers, employees, agents, or attorneys thereof.

The term "general solicitations" means solicitations for contributions or announcements of solicitations for contributions that do not ask the contributor or suggest to the contributor that he or she designate at that time a specific candidate (identified by name or state) to receive the solicitee's contribution. Such solicitations may have preceded, or may have been made by the NRSC in contemplation of, solicitations asking the contributor to designate a specific candidate.

The terms "cost" or "costs" include, where appropriate, costs of printing, telephone usage, postage and other costs of sending messages, travel, computer usage, labor and services (including, but not limited to telephoning, writing, speaking, accounting, and technical services), administrative services, rentals, and other overhead costs.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

The Federal Election Commission needs information in order to determine the costs of solicitations made by the NRSC for the Santini campaign. This cost should include not just the amount attributable to the solicitations resulting in designation or redesignation of contributions to specific candidates but also the amount attributable to costs for solicitations not resulting in a designation or redesignation. The Commission is presenting two separate sections of questions pertaining to the solicitation costs. The first set asks for the NRSC's computation of costs by standards determined on its own (including costs for solicitations not resulting in a designation). The second set asks for the provision of various costs to provide a basis for a computation of solicitation costs. The first set is as follows:

1. State the total costs for solicitations for contributions to the Direct-To Program for the Santini campaign.

a. Break down this total into solicitation costs for each of the five operations of the Direct-To Program, i.e., Direct-To, Direct-To Auto, Miscellaneous Conduiting, The Trust Program, and Majority '86.

b. State how the figures in 1a were computed or allocated to the Santini Committee. Your answer should include, but not be limited to, the allocable costs for setting up and administering the Direct-To Program (e.g., payments to Arthur Andersen for services referred to on pp. 251-252 of the attachments to your September 22, 1987, response and the costs of procedures described on p. 298 of the attachments), the allocable costs of general solicitations made in contemplation of follow-up phone and/or mail solicitations asking for redesignation, the costs of such specific mailings or solicitations (including the services of those involved), and the costs of follow-up mailings and phone calls.

The second set, numbered 2-6, is as follows:

2. For the Direct-To operation, state:

a. the total cost of the general solicitations or fundraising appeals referred to on p. 1 of your September 22, 1987, response to the Commission, and how this cost was computed or otherwise determined;

b. the number and total dollar amount of contributions received from these general solicitations;

c. the number and total dollar amount of contributions from these general solicitations that were redesignated to candidates;

d. the number and total dollar amount of contributions that were redesignated for the Santini campaign;

e. the number and costs of phone solicitations asking for redesignations for specific candidates, and how such costs were computed or otherwise determined;

f. the different types of phone scripts used for soliciting contributions to specific candidates by candidates or states referred to, and the number of times the specific script was used or the specific letter was sent,

e.g., Abdnor, Hawkins, Santini, Moore - 1,000 phone solicitations; and

g. the costs of the letters and verification forms sent to those designating Santini and any remaining expenses attributable to the Santini campaign after candidate designation, and how such costs were computed or otherwise determined.

3. For the Direct-To Auto operation, state:

a. the number and total costs of the solicitations requesting an earmarked contribution for one specific candidate, referred to on p. 3 of your September 22, 1987, response, and how this cost was computed or otherwise determined;

b. the number of the solicitations described in 3a requesting an earmarked contribution for the Santini campaign and how this cost was computed or otherwise determined;

c. the number and total dollar amount of the contributions received in response to the solicitations described in 3a;

d. the number and total dollar amount of the contributions designated for the Santini campaign received in response to the solicitations described in 3a; and

e. whether the \$672,000 figure submitted by you as the cost of the September 2, 1986, mailing includes the cost of letters mailed referring to The Fund for America's Future (discussed on pp. 299-315 of the attachments to your September 22, 1987, response) and the reasons for any non-inclusion.

4. For the Trust Program, state the following:

a. the total cost of any and all general solicitations or fundraising appeals which were mailed or made at a meeting or by telephone in anticipation of having Trust Program members designate candidates to receive contributions, and how this cost was computed or otherwise determined;

b. the number and total dollar amounts of contributions resulting from the general solicitations or appeals referred to in 4a;

c. the number and total dollar amounts of contributions



resulting from the general solicitations or appeals referred to in 4a that were designated for specific candidates;

d. the number and total dollar amount of contributions resulting from the general solicitations or appeals referred to in 4a that were designated for the Santini campaign;

e. the total cost of mailings, meetings, and telephone solicitations where specific candidates were listed or enumerated as potential recipients of contributions, and how this cost was computed or otherwise determined;

f. the different types of phone scripts and letters used for soliciting contributions to specific candidates by candidates or states referred to and the number of times the specific script was used or the specific letter was sent,

e.g., Abdnor, Hawkins, Santini, Moore - 1,000 phone solicitations SD, FL, NV, LA - 1,000 letters mailed; and

g. the total costs of letters and other verification correspondence sent to those designating the Santini campaign and any remaining expenses attributable to the Santini campaign after candidate designation, and how such costs were computed or otherwise determined.

5. For the Majority '86 operation, state:

a. the number and total cost of the solicitations to individual and PACs requesting \$5,000 or more referred to on pages 4 and 5 of your September 22, 1987, response and how this cost was computed or otherwise determined;

b. the number and total dollar amount of contributions received from the solicitations referred to in 5a;

c. the number and total dollar amount of contributions received from the solicitations referred to in 5a that were designated for candidates;

d. the number and total dollar amount of contributions received from the solicitations referred to in 5a that were designated for the Santini campaign, prior to follow-up phone calls;

e. the different types of communications (referred to in 5a) used for soliciting contributions by candidates or states referred to, or, if a general solicitation, a description to that effect, and the number of times the specific letter was sent or the specific script was used (refer to question 4f for a description of the format of your response);

f. the total cost of the follow-up phone calls to Inner Circle donors referred to on p. 5 of your September 22, 1987,

response, and how this cost was computed or otherwise determined;

g. the number and total amount of contributions with respect to which the phone calls referred to in 5f were made;

h. the number and total amount of contributions that were designated for specific candidates as a result of the phone calls referred to in 5f;

i. the number and total amount of contributions that were designated for the Santini campaign as a result of the phone calls referred to in 5f;

j. the different types of phone scripts used for soliciting contributions to specific candidates by the candidates or states referred to, and the number of times each script was used (refer to question 2f for a description of the format of your response); and

k. the total costs of letters and other verification correspondence sent to those designating the Santini campaign and any remaining expenses attributable to the Santini campaign after candidate designation, and how such costs were computed or otherwise determined.

6. In connection with the Miscellaneous Conduiting operation, you state that the NRSC received solicited and unsolicited earmarked contributions for forwarding to particular candidates and that there were no specific written solicitations for these programs. Using questions 2-5 as a guideline, e.g., questions on allocable costs of general solicitations and phone solicitations, state the costs attributable for the Santini campaign.

7. With respect to the payments by the Santini Committee for the solicitation costs of the Direct-To Program, state:

a. the amount of payments made by the Santini Committee to the NRSC in the form of direct payments;

b. the amount in coordinated expenditures attributed to the solicitation costs;

c. the entries in the NRSC reports for each of these payments or coordinated expenditures (by report, page number, and amount).

8. With respect to the Majority '86 operation, p. 5 of your September 22, 1987, response and documents enclosed with that response starting at p. 363 indicate that the NRSC would credit a contributor's \$1,000 1986 Inner Circle dues to a Majority '86 membership and then that Inner Circle member could commit \$1,000 each to four candidates to become a Majority '86 member. Then, the NRSC would phone the contributor and ask for a designation of

the \$1,000 for a specific candidate.

a. Prior to the making of the initial \$1,000 contributions, state whether the NRSC informed the Inner Circle donors referred to above that it would subsequently contact them to redesignate the initial \$1,000 contributions. If so, state how this was done (including references to specific documents and the language used).

b. State the contribution amount transmitted to the Santini campaign via NRSC check that resulted from the redesignation of the initial \$1,000 Inner Circle contributions referred to above.

9. State the information given to the Santini Committee by NRSC personnel with respect to the conduct of the Direct-To Program and with respect to the conduct of each of the five operations of the Direct-To Program. Such information should include, but not be limited to:

a. information as to the existence, contents, and meaning of the Direct-To Program Agreement between the NRSC and the Santini campaign, e.g., the meaning of the phrase "the NRSC's masterfile" and the meaning of the phrase "direct fundraising costs associated with a particular mailing or event" (as opposed to other solicitation costs of the program not associated with a particular mailing or event);

b. information as to the types of NRSC solicitations made, e.g., general solicitations by mail, phone, or at meetings, solicitations asking for the designation by the original contributor of specific candidates (by name or state), and phone solicitations to contributors who had already made contributions asking for designation of specific candidates;

c. information as to the frequency and extent of the types of solicitations discussed in response to 9a, e.g., when and how often such solicitations occurred and the number of persons solicited by the NRSC for contributions to Republican Senatorial campaigns and the Santini campaign;

d. information as to how solicitations were conducted with respect to each of the five operations of the Direct-To Program;

e. information as to how contributions were to be passed on to campaigns, i.e., either in the form of contributor checks or in the form of NRSC checks cut after redesignation; and

f. information as to the types of costs (e.g., mailing, telephone, travel, computer, labor, costs of setting up the program, costs of general solicitations) and the extent of costs (including amounts ultimately paid or unpaid by the Santini Committee) incurred by the NRSC for the solicitation program.

10. State the most recently known home address and business

address of Maryanne E. Preztunik, the NRSC's former Comptroller and Director of Administration.

**Request for Documents**

Provide copies of all documents pertaining to the responses to interrogatories 8 and 9, including, but not limited to, correspondence with contributors (with respect to 8a), internal memoranda, and evidence of communication with the Santini Committee by telephone, written correspondence, face-to-face conversation or any other means.

## FACTUAL AND LEGAL ANALYSIS

## I. BACKGROUND

Complainant cited what he considered to be the best example of such an exercise of direction or control, referring to the report in the Santini Committee's 1986 April Quarterly of the receipt on March 31, 1986, of \$19,012 in individual contributions for which the NRSC was the conduit. That report listed numerous small contributions from individuals in various states. Complainant pointed out that Mr. Santini did not announce his candidacy until March 24, 1986, and maintained that it would have

been impossible for such contributions to have been made to the Santini Committee without the exercise of direction or control by the NRSC.

In making his allegations, complainant was alleging a violation of 2 U.S.C. § 441a(h) by the NRSC. In addition, complainant alleged that these contributions were not reported correctly.

Counsel for the NRSC stated that, in March, 1986, it had an "earmarking" or "conduit" program for the Santini Committee. Counsel stated that, between March 25 and March 31, 1986, "contributors directed the NRSC to forward to the Santini campaign all or portions of specific contributions they had already sent in response to NRSC-originated fundraising appeals."

Counsel stated that during the 1985-6 election cycle, the NRSC made arrangements "to enable contributors to earmark their contributions to specific candidates through a telephone contact, followed by a confirmatory letter. This program was known as the "'direct to' program." According to an affidavit of the NRSC's Comptroller and Director of Administration, when the NRSC received a check pursuant to a fundraising appeal, the contribution was either recorded as a contribution to the NRSC and placed in the NRSC's operations account or it was deposited in a separate account for the "direct to" program, "predetermined by the size of the check and other administrative factors." If a check was deposited in the latter account, the contributor was subsequently called by one of the NRSC phone bank callers. During these calls, the contributor "was thanked for the recent

contribution, told that specific campaigns were in need of assistance, and asked whether he or she wished to direct all or a portion of the contribution to any of those campaigns."

According to counsel's response:

a minimum of three candidates (and often four) were always identified by the NRSC caller. Contributors contacted by telephone directed their contributions in a variety of ways: to be divided between all of the candidates mentioned, to be divided between only some of them, to be sent to only one of them, to be sent to candidates not mentioned by the NRSC caller, or to be sent to no candidate.

If the contributor stated that all or part of his contribution should be sent to a specific candidate, the NRSC forwarded the amount of the contribution. Otherwise, the funds were placed in the NRSC operations account.

Counsel also described the arrangements between the NRSC and the recipient Senatorial committees. He stated:

NRSC entered into agreements with campaigns which received earmarked funds through this "direct-to" program. See sample Agreement at Exhibit 2. The agreements provided that those campaigns would be billed on a monthly basis for their costs associated with this program, including the services of the telephone callers, the correspondence with contributors, and NRSC's overhead and other costs. Id., and Preztunik Affidavit at ¶ 11. Each campaign was billed a flat rate of \$3 per earmarked contribution received through the "direct-to" program, on the independent advice of two different accounting firms. Id. All bills for this service were presented to all participating Senate campaigns, including Congressman Santini's, and have been paid in full.

The 1986 reports of the NRSC denoted the contributions that

passed through the NRSC and were sent on to the Santini Committee. These reports explicitly stated whether the contribution was transmitted by NRSC check or by contributor check and reported contributions passing through its account on both its receipt and expenditure schedules.

Although the NRSC reported contributions passed on to the Santini Committee in the form of NRSC checks or contributor checks, the NRSC's reports contained no indication that it exercised direction or control over the contributions or that the contributions were to be considered as contributions from both the original contributors and the NRSC.

Based on the foregoing information, the Commission, on July 28, 1987, found reason to believe that the NRSC and its treasurer, violated 2 U.S.C. §§ 441a(h) and 434(b) and 11 C.F.R. § 110.6(d)(2) and found no reason to believe that the NRSC violated 11 C.F.R. § 110.6(c)(1) and (c)(4). The Commission also approved interrogatories and requests for documents.

#### **B. Responses**

The NRSC submitted a response on September 22, 1987. The response described five different operations within the "Direct-To" Program and stated the amounts sent on to the Santini Committee. These operations were: (1) Direct-To, which resulted in \$71,627.33 in contributions transmitted by NRSC checks; (2) Direct-To Auto, which resulted in \$399,131.80 in contributions transmitted by NRSC checks; (3) Miscellaneous Conduiting, which resulted in \$28,295.54 in contributions transmitted by NRSC checks and \$235,901.66 in contributions transmitted by



contributor checks; (4) the Trust Program, which resulted in \$5,600 in contributions transmitted by NRSC checks and \$107,875 transmitted by contributor checks; and (5) Majority '86, which resulted in \$32,575 transmitted by NRSC checks and \$43,000 transmitted by contributor check. Thus, according to the NRSC's response, \$537,229.67 in contributions were transmitted by NRSC checks and \$386,776.66 were transmitted by contributor checks.

The NRSC's response described each of these operations. Two of these operations appear to have involved the receipt of unearmarked contributions by the NRSC and the subsequent communication to contributors during which such contributors were asked to designate candidates to receive NRSC checks. These were the Direct-To operation and the Majority '86 operation. The other operations involved the receipt by the NRSC of contributions which were earmarked at the time they were made or at the time the sums were pledged.

Among the documents submitted by the NRSC were copies of solicitations which yielded the contributions for the Direct-To operation. These were the solicitations that preceded the phone calls in which the NRSC asked for the earmarking of contributions already made. These solicitations did not mention specific candidates or states and did not state that the contributor would be called subsequently to designate a recipient. Thus, it appears that the contributions made pursuant to those solicitations were made without the knowledge that they could subsequently be earmarked.

The documents are not as clear with respect to the original

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solicitations for the Majority '86 donors. In its response to the interrogatories, the NRSC explained that contributions from NRSC "Inner Circle" donors (i.e., \$1,000 contributors) were deposited into the Majority '86 account while NRSC telephone operators contacted the donors for earmarking the contribution to particular candidates. The sample solicitation letter enclosed by the NRSC was sent to an Inner Circle member and invited him to join Majority '86 which was open to those who contributed \$1,000 to the Majority '86 escrow account and who made four \$1,000 contributions through the NRSC to each of four Republican candidates. Those making a \$1,000 contribution to renew their Inner Circle membership, however, could also join Majority '86 by applying that \$1,000 toward Majority '86 membership and contributing \$1,000 to each of four candidates through the NRSC. It is unclear from the solicitation letter and from other documents submitted whether the initial \$1,000 contributions were made with the knowledge that the NRSC would subsequently ask for designation of those contributions. In addition, it appears that some Majority '86 donors contributed \$5,000 checks made out to the NRSC with designations of recipient candidates rather than separate \$1,000 checks to be passed on. Therefore, it is unclear how much of the \$32,575 in Majority '86 contributions transmitted by NRSC check resulted from the initial \$1,000 contributions and how much resulted from remaining contributions.

There were arrangements between the NRSC and the Santini Committee whereby the Santini Committee paid the NRSC for solicitation costs. One of the arrangements for payments was

explained by the NRSC's Controller and Director of Administration in response to the complaint in this matter and is described above. The cost of \$3 per contribution covered the services of the telephone callers, correspondence with contributors who had directed a contribution to a candidate, and an allocated portion of the NRSC's overhead and other costs. According to the affidavit of the NRSC's Comptroller and Director of Administration, the fee was derived pursuant to the opinions of two accounting firms as to the "value of the services provided" to candidates through the Direct-To Program. It appears that these arrangements applied to the Direct-To operation and to some of the Majority '86 operation. Another arrangement pertained to a Direct-To Auto solicitation involving a mass mailing on September 2, 1986, in which persons were asked to make a contribution to be divided among four candidates listed by state. For that solicitation, each candidate committee was charged \$.33 per contribution forwarded by the NRSC, an amount determined by estimating the cost of each mailing (\$1.32) and dividing it by four. The NRSC then charged for only successful solicitations, leaving the cost of unsuccessful solicitations unpaid for. According to the NRSC, the cost of that mailing was \$672,000. The NRSC was reimbursed by the candidate committees in amounts totalling only \$63,432, thus leaving \$608,568 in solicitation costs unpaid for. In the case of the latter arrangement, it appears that the amounts charged to the candidate committees were based on the number of contributions earmarked rather than on the actual cost. The first arrangement (i.e., the arrangement

providing for a \$3 payment per contribution) may also have involved payment by the individual candidate committees for only successful solicitations, rather than payment for all of the allocable solicitation costs.

The Nevada Senate race accounted for 12.5 per cent of the Senate races listed in the solicitation letters for the September 2 mailing. It may be concluded, therefore, that \$76,071 in solicitation costs for the Santini campaign were not paid for.<sup>1</sup> The reports of the NRSC indicate that the Santini Committee made fifteen payments totalling \$58,302.29 to the NRSC for fundraising costs, mailing services, and "fee[s]" (although it is not known whether these payments were in connection with the conduit operations). In addition, according to the Direct-To Program Agreement, up to five per cent of the NRSC's maximum coordinated expenditure limit, i.e., the limit under 2 U.S.C. § 441a(d), for a candidate's campaign would be escrowed until October 20, 1986, and used to pay for the campaign's unpaid bills for the solicitation costs. The coordinated expenditure limit of the NRSC for Nevada was \$87,240, five per cent of which is \$4,362. According to the information available, therefore, the most the Santini Committee paid for solicitation costs in connection with the conduit operations was \$62,664.29. This amount, which is a total for the year, is still exceeded by the unpaid amounts for the September 2 mailing alone which accounted for only about 40

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1. There were 24 different versions of the solicitation letters sent September 2. Each solicitation referred to "[o]ur Republican Senate candidates in" and then listed four states. Of the 96 references to a state, i.e., four states in each of 24 letters, Nevada was referred to twelve times.

per cent of the contributions made to the Santini Committee under all Direct-To operations. Therefore, although the total of unpaid solicitation costs is not known, the figures thus far indicate that there was a significant amount.

## II. LEGAL ANALYSIS

It appears that further investigation is necessary with respect to the total of contributions by the NRSC to the Santini Committee. One of the figures that is needed is the cost of the solicitations by the NRSC for contributions to be sent to the Santini campaign through the NRSC. The explanations of the NRSC indicate that the amounts charged to and paid by the Santini Committee for some of the solicitations were based on the number of successful solicitations alone, rather than on the costs for both successful and unsuccessful solicitations, and there is a lack of certain information as to costs and charges for other Direct-To solicitations. Therefore, the actual costs of all the solicitations may have exceeded the amounts charged to and paid by the Santini Committee. The question arises as to whether any solicitation costs not paid for were contributions to the Santini Committee.

Section 431(8)(A) of Title 2 and 11 C.F.R. § 100.7(a)(1) define "contribution" to mean "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." Section 100.7(a)(1)(iii)(A) of the Commission Regulations defines "anything of value" as including all in-kind contributions, and states that "the provision of any goods or

services without charge . . . is a contribution."

According to 11 C.F.R § 106.1(a), "expenditures . . . made on behalf of more than one candidate shall be attributed to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably expected to be derived." Section 106.1(b) states that an authorized expenditure (other than a section 441a(d) expenditure) made by a political committee on behalf of a candidate shall be reported as a contribution in-kind to the candidate on whose behalf the expenditure was made. Section 106.1(c)(1) provides that expenditures for fundraising need not be attributed to individual candidates "unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate." Section 106.1(d) defines "clearly identified" to mean either that the candidate's name appears, a photograph or drawing of the candidate appears, or "the identity of the candidate is apparent by unambiguous reference."

Based on the above-stated sections, it appears that, in order to determine whether the cost for all of the solicitations should be considered as an in-kind contribution of the NRSC to the Santini Committee, it is necessary to establish that the costs were incurred for the purpose of influencing a federal election, that the Santini Committee derived a benefit, and that the expenditures resulting in that benefit can be directly attributed to Santini.

The written solicitations and phone scripts provided by the NRSC discuss the need of funds by the Senate candidates for the

upcoming election. In addition, the Santini Committee benefitted from both the successful and unsuccessful solicitations. If the Santini Committee had undertaken a comparable solicitation effort, it would have paid for all of the solicitation costs; thus, it may have been relieved of the financial burden of the unsuccessful solicitations. Furthermore, since each of the written and phone solicitations contained an electioneering message, something of value was indeed provided by the NRSC to the Santini campaign, regardless of the success of the solicitation. Finally, Mr. Santini was clearly identified either by name or by the political party, office sought, and state in solicitations sent by the NRSC and submitted as documents. Thus, in summary, it appears that any amounts for solicitation costs for Santini that were not paid by the Santini Committee were contributions and should be added to the total of contributions by the NRSC to the Santini Committee.

The Commission has already found reason to believe that the NRSC has violated 2 U.S.C. § 441a(h). Unpaid for solicitation costs should be added to the amount apparently in excess of the statutory limit. Moreover, such additional costs were not reported by the NRSC on its Schedules B as contributions to the Santini Committee. Section 434(b)(6)(B) of Title 2 requires a political committee, other than an authorized committee, to disclose the name and address of each political committee that has received a contribution from it along with the date and amount of the contribution. Section 434(b)(4)(H)(i) requires a political committee, other than an authorized political

committee, to report the total of all contributions made to other political committees. As stated above, 11 C.F.R. § 106.1 requires the reporting of expenditures or in-kind contributions made on behalf of more than one candidate and attributed to each candidate. Based on the foregoing analysis, there is reason to believe that the NRSC and Frederick W. Bassinger, as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 106.1.